Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

COMMENTS OF
THE NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION

The National Tribal Telecommunications Association (NTTA) provides these comments in response to the Federal Communications Commission's (Commission or FCC) Further Notice of Proposed Rulemaking released in the above-captioned proceeding.[1]

NTTA consists of Tribally-owned communications companies and broadband providers including Cheyenne River Sioux Telephone Authority, Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., Hopi Telecommunications, Inc., Mescalero Apache Telecom, Inc., Saddleback Communications, San Carlos Apache Telecommunications Utility, Inc., Tohono O'odham Utility Authority, and Warm Springs Telecom, as well as associate members Nez Perce

[1] *In the Matter of Connect America Fund,* Further Notice of Proposed Rulemaking, WC Docket No. 10-90 (FCC 18-176, rel. Dec. 13, 2018) (*FNPRM*)

Tribe and Sacred Wind Communications. NTTA's mission is to be the national advocate for telecommunications service on behalf of its member companies and to provide guidance and assistance to members who are working to provide modern telecommunications services to Tribal lands.

NTTA files these comments to further support the proposal contained in the *FNPRM* for a Legacy support-based Tribal Broadband Factor (TBF).

I. BACKGROUND

In the *FNPRM*, the Commission requests comment on NTTA's proposal to adopt a TBF for the High Cost Loop Support (HCLS) and Connect America Fund – Broadband Loop Support (CAF BLS mechanisms (together the Legacy mechanisms). In the accompanying *Report and Order*, the FCC adopted a TBF, of sorts, for the upcoming second Alternative Connect America Cost Model (A-CAM) offers of support, also known as ACAM II.[2] The FCC's TBF adjusts the high cost threshold and funding cap to recognize the "high concentration of low-income individuals [and] few business subscribers in many rural, Tribal areas."[3]

The version of the TBF adopted for the ACAM II offers of support, while appreciated by the likely few carriers that may be able to take advantage of the ACAM II offers, is a far cry from the TBF originally proposed by NTTA in 2015.[4] The original TBF proposed a 25% increase in high

[2] In the Matter of Connect America Fund, WC Docket No. 10-90, Report and Order (FCC 18-176, rel. December 13, 2018) (*Report and Order*) at 55
[3] *Id*.
[4] See Letter from Godfrey Enjady, NTTA President, to Marlene H. Dortch, filed in WC Docket No. 10-90 on June 19, 2015.

cost support for any rate-of-return regulated (RoR) carrier serving Tribal areas in exchange for certain deployment obligations.[5]

In the *FNPRM*, the Commission recognizes that in addition to the TBF adopted for the upcoming ACAM II offers, consideration should be given to NTTA's and Gila River Telecommunications, Inc.'s (GRTI) contention that the Legacy support mechanisms require similar treatment.[6] Specifically, the Commission asks:

1. How do the differences between the A-CAM II offer and legacy support impact our analysis? For example, the A-CAM II offer is based on the estimated take rates and potential revenues per subscribers, whereas the legacy program is based on actual take rates and imputed revenues per subscriber. Does this difference suggest a different means of implementing a Tribal Broadband Factor in the legacy program? If so, in what way?[7]

2. Also, do the newly increased legacy budget, along with elimination of the capital investment allowance and earlier opex limitation relief, mitigate to a degree the need for a Tribal Broadband Factor for legacy carriers? If so, how much?[8]

3. For CAF BLS, should we reduce the $42 per line funding threshold to $39.38 (the high cost funding threshold for the A-CAM II offer), to $31.50 (as suggested by NTTA), or to some other amount?[9]

4. How should the structural differences between the CAF BLS program and the A-CAM II offer impact our decision?[10]

5. Should we adopt a Tribal Broadband factor that applies to all carriers serving Tribal lands (as we have defined that for the purposes of the A-CAM II offer), or should we target it based on the level of existing deployments, whether by the legacy carrier or its competitors?[11]

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[5] *Id.*
[6] See Ex Parte Communications filed by the NTTA and GRTI, WC Docket No. 10-90, on December 5, 2018
[7] *FNPRM* at 206
[8] *Id.*
[9] *Id*. at 207
[10] *Id.*
[11] *Id*.

6. What additional deployment obligations should we apply to carriers receiving the benefit of a Tribal Broadband Factor?[12]

7. [S]hould we proceed with a Tribal Broadband Factor for HCLS? Whereas the A-CAM II offer is designed to support broadband-capable networks and requires concrete buildout obligations in exchange for support, the HCLS component of the legacy program is designed to offset the intrastate costs of voice networks without any corresponding buildout obligations. Given that context, would a Tribal Broadband Factor make sense applied to HCLS? If so, how could we revise the HCLS algorithm to incorporate a Tribal Broadband Factor?[13]

8. What would the impact be on other carriers participating in these programs given our decision to maintain the separate HCLS funding cap?[14]

9. Should we create new broadband deployment obligations tied to any increase in HCLS funding from a Tribal Broadband Factor, and if so, how should we do so?[15]

While NTTA firmly believes the record on the various iterations of the TBF fully supports the need for such a funding boost in Tribal areas, the comments offered herein will summarize the uncontested evidence offered in this proceeding and will further support the need for a Legacy Support mechanism TBF.

II. A LEGACY SUPPORT MECHANISM TRIBAL BROADBAND FACTOR IS NECESSARY

A. The Unique Nature of Service in Tribal Areas

Numerous parties have acknowledged the unique circumstances facing communications providers in Tribal areas of the United States. The FCC's National Broadband Plan stated "Many Tribal communities face significant obstacles to the deployment of broadband infrastructure,

[12] *Id*.
[13] *Id*. at 208
[14] *Id*.
[15] *Id*.

including high buildout costs, limited financial resources that deter investment by commercial providers and a shortage of technically trained members who can undertake deployment and adoption planning."[16] In the 2011 *ICC/USF Transformation Order*, the Commission stated:

> "Tribal governments, and by extension, Tribally-owned and operated carriers, play a vital role in serving the needs and interests of their local communities, often in remote, low-income, and underserved regions of the country. Tribally-owned and operated carriers serve cyclically impoverished communities with a historical lack of critical infrastructure. Reservation-based economies lack fundamental similarities to non-reservation economies and are among the most impoverished economies in the country. Tribal Nations also cannot collateralize trust land assets, and as a result, have more limited abilities to access credit and capital."[17]

In the *Tribal Opex Relief Order*, the Commission acknowledged that it was "persuaded based on the record before [it] that there is good reason to increase the opex limitation for carriers receiving legacy high-cost support that primarily serve Tribal lands because of the increased costs of providing service on Tribal lands."[18] In *the Tribal Opex Relief Order*, the Commission goes on to list a number of areas where expenses incurred serving Tribal areas are higher than in other areas:[19]

1. Securing rights-of-way and easements to install new broadband facilities, including the consent of multiple owners of allotted lands, as well as the consent of Tribal authorities, the Bureau of Indian Affairs (BIA), and others.
2. Tribal sovereignty issues
3. Tribal hiring preference
4. Requirement that Tribal construction overseen by a Tribal member.

[16] Connecting America: The National Broadband Plan, released March 16, 2010 at p. 152 (Box 8-4)
[17] *In the Matter of Connect America Fund, et. al*., Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, et al., (FCC 11-161, rel. 11/18/2011) (ICC/USF *Transformation Order*) at 1059
[18] In the Matter of Connect America Fund, Report and Order, WC Docket No. 10-90 (FCC 18-37, rel. April 5, 2018) at 5 (*Tribal Opex Relief Order*)
[19] *Id.*

These examples cited are all issues brought up by NTTA and its members, are on the record in this and other proceedings, and have yet to be opposed or disproven.

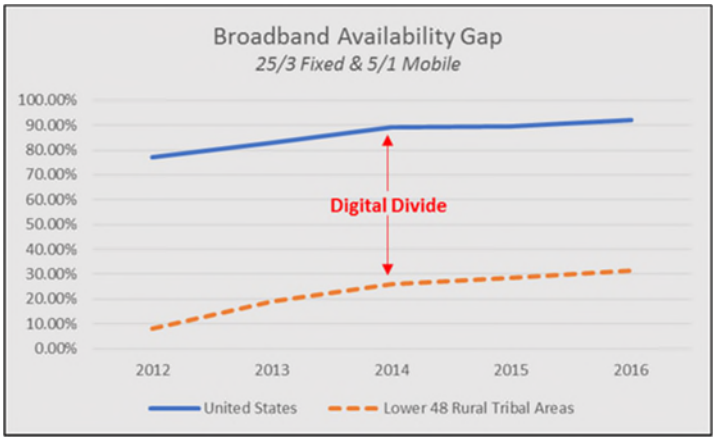
Over time, the Commission has recognized the essential and unique problem of providing communications services in Tribal areas. In 2011, the Commission noted that barriers to ensuring the availability of communications services in Tribal areas include "rural, remote, rugged terrain and areas that are not connected to a road system that increase the cost of installing infrastructure, limited financial resources to pay for telecommunications services that deter investment by commercial providers, a shortage of technically trained Native Nation members to plan and implement improvements, and difficulty in obtaining rights-of-way to deploy infrastructure across some Tribal lands."[20] To a significant extent, these, and other, barriers exist today in many Tribal areas. This is not a controversial issue – Tribal areas, especially rural Tribal areas, face unique and significant problems in deploying, operating, and maintaining communications networks.

B. The Digital Divide Persists Between Rural Tribal Areas and the Rest of the United States

According to the FCC's latest data, broadband availability continues to lag in rural Tribal areas, especially those in the continental United States (lower 48), compared to the rest of the country.[21]

[20] *In the Matter of Improving Communications Services for Native Nations*, Notice of Inquiry, CG Docket No. 11-41 (rel. March 4, 2011, FCC 11-30) at 2

[21] *In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Services to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, 2018 Broadband Deployment Report (FCC 18-10, rel. February 2, 2018)



This demonstrates that while progress is being made in terms of improving broadband availability in rural Tribal areas in the lower 48 states, the gap between availability in those areas and the country as whole stubbornly persists. According to the most recently available data (2016), 64.6 percent of Americans living on Tribal lands have access to fixed broadband service with speeds of at least 25/3 Mbps, compared to 92.2 percent of the country in total. However, it is important to note that the GAO recently concluded that the FCC's data on broadband availability (Form 477) overstates availability in Tribal areas.[22]

It is not only the Commission and NTTA members that recognize the unique challenges of serving Tribal areas. First, the Government Accountability Office (GAO) has issued multiple reports addressing the issues surrounding access to broadband in Tribal areas. For example, in September 2018, the GAO released a report examining the partnerships existing in order to address any funding barriers relating to broadband funding in Tribal areas. In addition, the GAO issued a report investigating efforts to better promote Tribal access to spectrum.[23] The

[22] GAO Report: Broadband Report, *FCC's Data Overstate Access on Tribal Lands*, GAO-18-630, September 2018
[23] GAO-19-75, *Tribal Broadband: FCC Should Undertake Efforts to Better Promote Tribal Access to Spectrum* (November 2018)

Congressional Research Service (CRS) also released information on the state of broadband availability in Tribal areas.[24] In that report, the CRS concluded:

> "Tribal areas and communities continue to lag behind other areas and segments of American society with respect to broadband and telecommunications services. High poverty rates and low-income levels in tribal lands—along with the fact that many tribal communities are located in remote rural areas (often with rugged terrain)—are major factors that may explain why tribal areas have comparatively poor levels of broadband access, and why providers may lack an economic incentive to serve those areas."

Finally, the GAO quite correctly notes in its September 2018 report on the few partnerships that exist to address Tribal funding barriers a very salient point:

> "An estimated 35 percent of Americans living on tribal lands lack broadband service, which could hinder tribal efforts to promote self-governance, economic opportunity, education, public safety, and cultural preservation. However, little federal funding aimed at increasing broadband service actually goes to tribal entities, even though the National Broadband Plan stressed that tribes needed substantially greater financial support and recommended that federal agencies facilitate tribal access to broadband funding opportunities."[25]

Given the above, it is clear that the digital divide continues to exist between rural Tribal areas and the rest of the country. The question for the Commission in this proceeding is what can be done within the confines of its universal service support policy. One of the Commission's most effective tools to address the lack of progress in the deployment of broadband networks in rural Tribal areas, and to ensure the ongoing operations and maintenance of those networks, is universal service support. NTTA offered, and will further support below, a method to recognize

[24] CRS Report R44416, *Tribal Broadband: Status of Deployment and Federal Funding Programs*, Updated January 9, 2019
[25] GAO-18-682 at 23

the unique needs Tribal areas, and the carriers that serve these areas through the existing legacy support mechanisms.

C. NTTA's Legacy Support TBF Proposal is a Necessary Step

As outlined above, NTTA has been advocating for a TBF in some form since June 2015. At that time, NTTA's preferred method was to apply a 1.25 multiplier to cost-based support received by a carrier serving Tribal lands, which would be accepted on a voluntary basis in exchange to certain deployment obligations. In the *Report and Order*, the Commission adapted NTTA's TBF to provide an additional opportunity to carriers serving locations in Tribal areas by reducing the ACAM high cost threshold by 25%.[26] It remains to be seen how many carriers will be able to take advantage of the ACAM II offers under the auspices of the new TBF, but it is highly likely that many NTTA members, and other RoR carriers serving Tribal areas, will make the decision to remain under Legacy support mechanisms. Given this, it is vital that the FCC adopt a similar mechanism for carriers remaining on Legacy support mechanisms to give Tribal areas the best chance to begin narrowing the digital divide.

It should be noted that NTTA's TBF proposal, as contained in the *FNPRM*, would provide support for operations and maintenance, as well as deployment, of broadband networks. As noted above and elsewhere, one of the challenges in rural Tribal areas is the higher than normal costs of operations and maintenance of broadband networks once they are in place. To ignore

[26] *Report and Order* at 55

this need is to risk higher future capital requirements to repair, replace, or upgrade neglected networks.

It should also be noted that increasing speed standards, as was adopted in the *Report and Order*, will result in increased deployment, operations, and maintenance costs, and these costs have been proven to be greater in rural Tribal areas. Given this, providing an additional amount of support for carriers serving rural Tribal areas with 25/3 Mbps, or greater, speeds will be vital in ensuring the digital divide does not increase.

To address the clear inconsistency inherent in the *Report and Order* for Native Americans living in areas served by future ACAM support recipients and those living in areas served by all other RoR carriers, the Commission should consider the following. First, to properly recognize the principle of the FCC-TBF regarding the "lower expected end-user revenues in rural, Tribal areas" in areas served by non-ACAM II support recipients, the Commission should reduce the end-user revenues implicit in the calculation of CAF BLS. As outlined in NTTA's October 25, 2018 Ex Parte filing, this can be implemented by reducing the $42 per month per line funding threshold[27] by 25% to $31.50. Second, the same principal can be recognized by revising the HCLS algorithm using a similar 25% factor.[28] These minor changes have the added benefit of being a natural outgrowth of what is already on the record in this proceeding.

[27] See 47 CFR §54.901(2), *Imputed Consumer Broadband-only Revenues*
[28] NTTA October 25, 2018 Ex Parte filing in WC Docket No. 10-90 at p.5

III. RESPONSES TO ISSUES RAISED IN THE *FNPRM*

The Commission asks a number of questions in the *FNPRM* about NTTA's proposed TBF revisions for Legacy support mechanisms. Issues are raised and comment is sought separately for NTTA's TBF proposal for CAF BLS and HCLS.

A. TBF for Connect America Fund Broadband Loop Support

The Commission first asks for comment on how the differences between the A-CAM II offers and Legacy support could or should affect the implementation of the Legacy TBF.[29] While NTTA does not believe the differences between the ACAM offers and Legacy support lead to any problems with implementing a TBF for Legacy support, NTTA does note one significant difference between the two mechanisms. This difference relates specifically to the determination of monthly costs deemed to be reasonable for end users to pay, known as the high cost threshold for ACAM support and imputed consumer broadband only revenues for CAF BLS. The ACAM high cost threshold, established at $52.50 per location, is based on an average revenue per subscriber (ARPU) of $75.[30] In discussing the CAF BLS benchmark, the Commission stated the $75 ARPU, however "was an all-inclusive estimate of end-user revenues for broadband and voice services, while the [CAF BLS] benchmark…presumes that carriers would still need additional end-user revenues to cover non-loop related costs, such as middle mile costs."[31] Therefore, the ACAM offers, by arriving at a high-cost threshold as described herein, implies support for middle mile

[29] *FNPRM* at 206
[30] *In the Matter of Connect America Fund*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 (rel. March 30, 2016, FCC 16-33) at 53 (*RoR USF Reform Order*)
[31] *RoR USF Reform Order* at 92

costs, while CAF BLS, as stated above, does not. This leads to the conclusion that the TBF for Legacy support is even more important in that middle mile costs, on average, are higher in rural Tribal areas but are not supported for those living in areas served by RoR carriers receiving Legacy support.

The Commission also asks whether the relief recently adopted in regards to operating expense relief, elimination of the capital investment allowance, and the increased overall Legacy budget, mitigates the need for the TBF.[32] While the positive effects of these three changes are appreciated, and indeed are a step in the right direction for assisting providers serving rural Tribal areas with deployment, maintenance, and operations of broadband networks, the fact remains that the digital divide persists, and the amount of support increase generated by these reforms applies to all rural carriers; therefore, the digital divide will still exist, but perhaps at a higher level of availability. In addition, total support levels for NTTA members as a whole has remained basically level since 2011[33], while at the same time new, explicit public interest obligations were imposed on all support recipients, such as 25/3 Mbps broadband service. As a result, and due to the unique circumstances that face providers serving rural Tribal areas (which will still exist no matter the support reforms adopted), additional support is still necessary. NTTA suggests the best way to accomplish this is to apply a TBF to Legacy support.

NTTA previously addressed how other components of a Legacy support mechanism TBF could operate, including issues such as carriers eligible and additional deployment obligations.[34]

[32] *FNPRM* at 206
[33] See October 2018 NTTA Ex Parte at 2
[34] *Id*.

In summary, all Legacy support recipients serving Tribal areas should, on a voluntary basis, be able to participate in exchange for additional deployment obligations.

B. TBF for High Cost Loop Support

NTTA proposed a TBF for HCLS that would adjust the calculation to recognize the additional need for support in rural, high cost, Tribal areas. HCLS is designed to support higher than average loop costs related to voice telecommunications services. The HCLS calculation, which has been in effect in one form or another since the 1990s, provides support for loops costs in excess of a national average, according to the algorithm contained in the FCC's rules. In addition, and has been recognized by the Commission, HCLS also helped in the development and availability of the initial broadband services -those that jointly used the local loop to deliver digital subscriber line (DSL), for example. Today, HCLS remains a vital piece of overall support for carriers serving high cost rural Tribal areas as it assists in keeping high costs passed on to consumers who choose to retain voice/data services at an affordable level.[35]

NTTA proposes to revise the HCLS algorithm for carriers serving Tribal areas in the following manner:

- The current formula provides for study areas with 200,000 or fewer loops, and for study area costs per loop between 115% and 150% of the national average cost per loop, HCLS covers 65% of the study area loop costs. NTTA proposes to increase this amount to 81.25% (a 25% increase).

[35] It is vital to note that NTTA members have Native Americans residing in their service areas that still do not, for a variety of reasons, have access to voice service. While these numbers are dwindling, the fact remains that HCLS is still crucial if these customers are to be eventually served, and also to assist in the operations and maintenance of voice/broadband capable networks, and not only broadband-capable networks.

- For study areas with loop costs in excess of 150% of the national average, the HCLS covers 75% of the study area's costs. NTTA proposes to increase that to 93.75% (a 25% increase)

In order to ensure the increase in support does not adversely affect non-participating carriers, NTTA recommends treating the increase separately from the rest of the HCLS and funding it accordingly. As stated in NTTA's October 2018 Ex Parte, the increased support generated by the Legacy TBF proposal should be capped at $25 million, which would cover both HCLS and CAF BLS-associated increases.[36]

C. Additional Deployment Obligations

NTTA previously stated in its October 2018 Ex Parte that carriers accepting the additional support offered via the revisions to HCLS and CAF BLS outlined above will incorporate additional buildout and reporting obligations. In addition to the baseline buildout obligations assigned to the receipt of HCLS and CAF BLS, NTTA proposes that a specific number of obligations in terms of locations lacking 10/1 Mbps or 25/3 Mbps service be attached to the increased support discussed herein. Specifically, and consistent with past NTTA proposals[37], a certain percentage of new support, equal to the percentage of CAF BLS and HCLS expended on capital expenditures and depreciation expense, be applied to a per-location allowance to arrive at the required new locations to be built out during the term of support. This method recognizes that the CAF BLS and

[36] This proposal would necessitate up to a $25 million infusion of high-cost support for the Legacy TBF as described herein in order to ensure any increase in support would not adversely affect other support recipients. NTTA notes that this equates to approximately 1.25% of the current $2b RoR budget, to be even less after budget adjustments resulting from the *Report and Order* are made.
[37] See NTTA October 18, 2016 Ex Parte filing in WC Docket No. 10-90, at 1-2

HCLS programs help to support not only deployment but also ongoing operations and maintenance of broadband capable networks.

CONCLUSION

NTTA appreciates the Commission's efforts to stabilize the RoR USF mechanisms as contained in the *Report and Order* and *FNPRM*. The TBF-based adjustments to the upcoming ACAM II offer are a step in the right direction, and demonstrate the Commission's commitment to addressing problems with broadband availability and affordability in rural Tribal areas. However, more must be done to close the digital divide that currently exists between rural Tribal areas in the lower 48 states and the rest of the country. While it remains to be seen that the impact the ACAM II offer, with the TBF additive, will have, it is clear that many RoR carriers serving Tribal areas will remain subject to the Legacy support mechanisms. Even with the progress made in the Report and Order, the fact remains that carriers serving rural Tribal areas experience a unique set of circumstances that increase not only deployment costs, but also the ongoing costs of operations and maintenance. Adopting a TBF-like revision for CAF BLS and HCLS is a good first step, and should be undertaken as soon as possible.

Respectfully Submitted,

Godfrey Enjady
President
National Tribal Telecommunications Association

March 8, 2019